REMARKS

Claims 14-20 rejected under 35 USC 101 by the Examiner have been cancelled.

Claims 23-26 rejected by the Examiner under 35 USC 112, second paragraph have been amended to provide for the proper antecedent basis.

With regard to claims 23-26, rejected under 35 USC 112, first paragraph, the Applicant's submits that it has been held that the function of the description requirement is to insure that the inventor had possession, as of the filing date of the application, of the specific subject matter claimed; how the specification accomplishes this is not material; the claims subject matter need be not be described in hace verba to satisfy the description requirement. Nor is it necessary that the application describe the claimed invention exactly, but only so clearly that one having ordinary skill in the pertinent art would recognize from the disclosure that the Applicant had invented the method. See in re Herschler, 200 USPQ, 711, 717 (CCPA 1979).

As set forth in re Smith and Hubin, 176 USPQ 620, 624 (CCPA 1973), compliance with the first paragraph of section 112 is adjudged from a perspective of a person skilled in the relevant art. The specification as originally filed must convey clearly to those skilled in the art the information that the Applicant has invented and the subject matter claimed.

When the original specification accomplishes this, regardless how this is accomplished, the essential goal of the description requirement under 35 USC 112 is realized. See also in re Smythe, 176 USPQ 279.

As it pertains to the present invention, the Applicant's submits that one skill in the art is one familiar with pharmaceutical compositions.

Therefore, the Applicant's submits that the specification as originally filed does convey to those skilled in the art the information as to how to practice the present invention. The Examiner has stated that the instant claims read on all compositions, which evoke biological mechanism which do not modulate the aqueous humor dynamics and interocular pressure.

The Applicant submits that claims 24-26 specifically set forth pharmaceutical compositions having non-inactivating sodium channel blocking activity. Accordingly, the Applicant's submits that the test set forth by the Examiner has been met. In view of the general knowledge of the technology utilized in the present invention, which is widespread, the application as originally filed states clearly to those skilled in the art the information that the Applicant's have invented and the subject matter claimed.

Withdrawal of the rejection of claims 23-26 under 35 USC 112, first paragraph, is respectfully requested.

Claims 23-36 further have been rejected by the Examiner under 35 USC 102(b) as anticipated by U.S. 5,403,861 to Goldin, et al.

The Applicants submits that anticipation is established only when a single prior art referenced discloses, expressly or under principles of inherency, each and every element of the claimed invention. RCA Corp. v. Applied Digital Data Systems, Inc. 221 USPQ 385 (Fed. Cir. 1994). Further, the Examiner must identify wherein each and every facet of the claimed invention is disclosed in the applied reference. Ex Parte Levy 17 USPQ 2d 1461 (USPTO Board of Patents Appeals and Interferences 1990).

Further, the Applicants submit that anticipation must meet strict standards, and unless all of the same elements are found in exactly the same situation and united in the same way to form identical function in a single prior art reference, there is no anticipation. Tights, Inc. v. Acme-McCrary Corp. et al. 191 USPQ 305 (CAFC 1976).

Bearing in mind this criteria, claims 23-26 provide for a method for preventing retinal ganglion cell death which includes the step of administrating to the ganglion optic nerve of a mammal, a pharmaceutical composition which evokes a biological mechanism which does not modulate aqueous humor dynamics and interocular pressure.

The Examiner has referenced Goldin, et al. patent as teaching rilusole as a compound which inhibits glutamate release from nerve terminals, as anticonvulsant activity improves sleep quality in rodents, and is active in

protecting the rodent brain from the cellular and functional consequences of ischemia, including the prevention of memory loss and hippocampal neuronal damage. There is no teaching whatsoever of administration of rilusole to the ganglion optic nerve. The claims of the present invention are directed to a method which includes the step of administration a pharmaceutical composition to the ganglion optic nerve. Since there is no teaching of this step in the Goldin, et al. reference, a rejection under 35 USC 102(b) is unsustainable.

The Examiner is respectfully requested to withdraw the rejection of claims 23-26 under 35 USC 102(b) on the basis of the Goldin, et al. reference.

In view of the arguments hereinabove set forth in amendment to the claims, it is submitted that each of the claims now in the application define patentable subject matter not anticipated by the art of record and not obvious to one skilled in this field who is aware of the references of record. Reconsideration and allowance are respectively requested.

Respectfully submitted,

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April 17, 2003

4/17/03
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